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JOHN F. DAVIS, CLERK

Supreme Court of the United States

No. 68, October Term, 1969

HARRY LAIKIND,

Appellant,

—vs.—

ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Appellee.

MOTION FOR LEAVE TO SUPPLEMENT APPELLANT'S BRIEF AS SUPPLEMENTED

and

SUPPLEMENT TO SUPPLEMENTED BRIEF

VICTOR KONOW,
A Member of the Bar of the Supreme Court of the United States, Counsel at the offices of Edward Pious,
261 Broadway,
New York, N. Y. 10007.

To: The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

Appellant respectfully moves this Court pursuant to Rule 16, subdiv. 5 of its Rules, for permission to supplement his brief as supplemented on April 24, 1969, with other intervening matter not then available.

Dated: November 5, 1969.

Victor Kokow,
A Member of the Bar of the Supreme Court of the United States, Counsel at the offices of Edward Pious.
261 Broadway,
New York, N. Y. 10007.

To: Attorney General of the State of New York

POINT A

THE JUDGMENT, BY STATUTORY LIMITATION, MAY NOT BE VACATED FOR THE PURPOSE OF INQUIRY INTO THE MERITS OF THE ACTION AFTER 5 YEARS FROM ITS ENTRY.

In our State, by statute,[1] referred to and construed in *Dobkin* v. *Chapman*, 21 N.Y. 2d 490, a judgment by default, predicated on service other than personal, may not be vacated unless a motion is made for such relief within 5 years after its entry.

In *United States* v. *Linzer Cleaning*, 173 Fed. Supp. 2d 227, 230 (U.S.D.C.-S.D.N.Y.), the requisites for judgment validity are set forth as follows:

> "The Board here is not a 'judgment creditor' in the usual, conventional sense, since it commenced no action, filed no complaint, served no summons, allowed no opportunity to answer and prepared no judgment".

The judgment here, entered May 18, 1964, is the result of positive compliance with the negative in the *Linzer* rule, *supra*.

To date, neither the Attorney General, nor any one else has moved to vacate, upon the premise that the underlying debt was not genuine, nor for any other cause.

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[1] CPLR (Civil Practice Laws and Rules) Sec. 317: "A person served with a summons other than personal delivery to him * * *, within or without the state, who does not appear may be allowed to defend the action within one year after he obtains knowledge of entry of the judgment, but in no event more than five years after such entry * * *".

POINT B

TREATY INTERPRETATION IS ESSENTIAL FOR NATIONAL HEGEMONY BECAUSE STATES AND NATIONS WILL TAKE COHESIVE DIRECTION ONLY FROM THE SUPREME COURT OF THE UNITED STATES.

We are spanning treaty gaps not by revision of the old, but rather, by new conventions drawn to conform to new concepts of international understanding.[2] New interpretations by this Court, therefore, have become necessary.

The *Vienna Convention on Consular Relations*, which came into force on March 19, 1967 (596 UNTS 261) and the *Draft European Convention on Consular Functions and Optional Protocol*,[3] have similarities of substance and contexts with this Convention.

As the products of contemporary continuity of conciliation in accelerated international change, they exemplify today's direction towards discontinuity of resistance to change.

Where Supremacy is involved, it is difficult, if not impossible, to overcome Mr. *Justice Harlan's* maxim, in *Zschernig* v. *Miller*, advocating resort to the "adequate alternative" principle of non-constitutional adjudication.

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[2] *Department of State Press Release* 252, September 2, 1969, says in part: "Secretary Rogers and the Belgian Ambassador, * * *, signed a new consular convention * * * on September 2.

The convention will replace the consular convention of March 9, 1880, * * *. In general, the new convention follows the pattern of more recent consular convention concluded by the United States with other countries dealing with the functions, privileges, and immunities of consular establishments. Its provisions reflect to some extent provisions in the multilateral consular convention signed at Vienna on April 24, 1963, now under consideration in the Senate Committee * * *."

[3] Council of Europe, Committee of Europe, Committee of Ministers, CM (64) 215, Addendum No. 1. (Strasbourg 5, November 1964).

Acceptance of his precept of priority, makes the treaty, not constitutional adjudication, the traditional activating catalyst which properly homogenizes Supremacy with the Common Law in derivation of a settled rule that began in this Court with *Hopkirk v. Bell*, 3 Cr. 454 (1806).

It is respectfully suggested that construction of the treaty in a contractual environment is the only constant that affords equal protection of "just due" within the objectives of the contracting parties.

Inconstants, such as adjudications by constitutional conformation to opinions, which themselves, are difficult to sustain in change, are not reconcilible to the inconstants of change without resort to abstract and euphemistic innovations.

The treaty, by its essence of existence in force, implies the presence of benefit, use and control.

Dated: November ~~15~~ 5, 1969.

Respectfully submitted,

VICTOR KONOW,
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